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CITATIONS

Statute:

Lanham Act, 54 Stat. 1125, as amended:

Section 313	3, 6
Section 604	2, 6
Section 611	4, 7

Miscellaneous:

S. Rept. No. 1286, 81st Cong., 2d sess., pp. 36, 38.. 7

In the Supreme Court of the United States

OCTOBER TERM, 1954

No. 627

SHANKS VILLAGE RESIDENTS ASSOCIATION, INC., ET AL., PETITIONERS

v.

ALBERT M. COLE, INDIVIDUALLY AND AS ADMINISTRATOR OF THE HOUSING AND HOME FINANCE AGENCY

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

A memorandum by the district court (R. 43-44) is unreported. Opinions of the Court of Appeals upon petitioners' application for a stay pending appeal (Pet. 17-26) and affirming the judgment of the district court (Pet. 13-17) are not reported.

JURISDICTION

The judgment of the Court of Appeals was entered December 30, 1954. The petition for writ of

certiorari was filed February 28, 1955. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether section 313 of the Lanham Act applies to temporary housing, the removal of which is directed by section 604 of the same Act.

STATUTE INVOLVED

1. So far as material, section 604 of the Lanham Act (added to the Lanham Act by section 201 of the Act of April 20, 1950, 64 Stat. 64), as extended by Executive Order No. 10339, 17 F.R. 3012, 42 U.S.C. 1584, provides:

> With respect to temporary housing remaining under the jurisdiction of the Administrator on land under his control, the Administrator shall (1) permit vacancies, occurring or continuing after July 1, 1953, to be filled only by transfer of tenants of other accommodations in the same locality being removed as required by this Act; (2) notify, on or before March 31, 1954, all tenants to vacate the premises prior to July 1, 1954; (3) promptly after July 1, 1954, cause actions to be instituted to evict any tenants still remaining; and (4) remove (by demolition or otherwise) all dwelling structures as soon as practicable after they become vacant: * * * *And provided further,* That nothing heretofore in this section shall apply (1) to any temporary housing in any municipality in which the total number of persons, who on December 31, 1948, were living in

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temporary family accommodations provided by the United States or any agency thereof since September 8, 1939, exceeds 30 per centum of the total population of such municipality as shown by the 1940 census, nor (2) to any temporary housing as to which the local governing body has adopted a resolution as provided in section 602 (c) hereof, nor (3) to any temporary housing for which a request has been submitted in accordance with section 601(b) of this Act, but which has not been relinquished or transferred solely because the applicant has been unable to obtain from the landowner the right to possession of the land on reasonable terms as determined by the Administrator: * * * nor (4) to any temporary housing in which accommodations have been reserved, prior to the enactment of this section, for veterans attending an educational institution if (i) such institution certifies that the accommodations are urgently needed for such veterans and submits facts showing, to the satisfaction of the Administrator, that all reasonable efforts have been made by the institution to find other accommodations for them and (ii) such institution agrees to reimburse the Housing and Home Finance Agency for any financial loss to the Agency in the operation of the accommodations after June 30, 1951.

2. So far as material, section 313 of the Act, as amended by section 202 of the Act of April 20, 1950,

64 Stat. 72, and as extended by Executive Order No. 10385, 17 F.R. 7525,[1] 42 U.S.C. 1553, provides:

> *Except as otherwise provided in this Act,* the Administrator shall, as promptly as may be practicable and in the public interest, remove (by demolition or otherwise) all housing under his jurisdiction which is of a temporary character * * *. Such removal shall, in any event, be accomplished not later than July 1, 1954 or by such later date as may be required because of extensions of time in accordance with section 604 hereof, with the exception only of such housing as the Administrator, after consultation with local communities, finds is still urgently needed because of a particularly acute housing shortage in the area: *Provided,* That all such exceptions shall be reexamined annually by the Administrator and that all such exceptions and reexaminations shall be reported to the Congress. [Emphasis added.]

STATEMENT

Petitioners are a New York corporation composed of residents of Shanks Village and individual residents thereof. Shanks Village is a Government-owned temporary housing project on land under respondent's control and is administered by

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[1] The executive orders extending the time limits fixed by sections 604 and 313 for action by the Administrator were issued by the President pursuant to section 611 of the Act, 65 Stat. 314, 42 U.S.C. 1589a.

him. It contains about 1,500 dwelling units converted from military barracks of World War II. Under date of January 26, 1954, pursuant to section 604 of the Lanham Act, each resident of the community was given notice to vacate the premises occupied by him by June 30 following.

On February 24, 1954, petitioners filed a complaint seeking declaratory relief and an injunction restraining respondent from compelling them to vacate (R. 2-12). The basis of the complaint was that section 313 of the Act requires respondent to continue to operate housing where he finds that an acute housing shortage exists, that such a shortage then existed in the area of Shanks Village, and that respondent refused to consider evidence of the existence of this condition.

Respondent's answer (R. 37-40) as amended (R. 41) denied the existence of a housing shortage, admitted he had refused to consider petitioners' evidence, and concluded (R. 40):

> that under Section 604 of the Lanham Act * * * his discretionary power to make findings which would permit the exclusion of any temporary housing project from the mandatory closing provisions of Section 313 of the Lanham Act * * * has been limited to cover only the categories of projects specifically mentioned as exceptions in Section 604 of the Lanham Act * * *; that the Shanks Village project does not come within any of the excepted categories and no claim that it does is made in the complaint. * * *

Respondent moved for judgment on the pleadings (R. 42) and petitioners moved for a summary judgment (R. 42-43). Observing "that there is no disputed issue of fact" (R. 44), the trial court entered judgment dismissing the complaint (R. 44). The court of appeals affirmed.

ARGUMENT

This case presents no question calling for review by this Court. There is no conflict of decisions and none is asserted. The decision of the court of appeals affirming the judgment of the district court is correct.

Section 604 of the Lanham Act, in unequivocal terms, directs respondent to evict tenants from temporary housing located on land under his control unless the housing comes within one of four categories excepted by that section. The housing in Shanks Village is on land under respondent's control and it is agreed that it is not within any of the excepted categories. (See opinion below, Pet. 15.) Accordingly section 604 compels the eviction of petitioners.

There is no merit to petitioner's contention that section 313 of the Act requires respondent to continue to operate *any* housing which "is still urgently needed because of a particularly acute housing shortage in the area." The limited scope of section 313 is disclosed by the words with which it begins which petitioners ignore (Pet. 5-6): "Except as otherwise provided in this Act." Since section

604 of the Act provides for the disposition of the housing at Shanks Village, section 313 does not apply to that housing; rather it deals with the removal of temporary housing untouched by section 604, i.e., housing on land not under respondent's control and housing on land under his control which falls within the four categories exempted from the mandatory requirements of that section.

The relation of the two sections is disclosed clearly by the report of the Senate Committee recommending the legislation which contained both. It said (S. Rept. No. 1286, 81st Cong., 2d sess., pp. 36 and 38):

> * * * No vacancies in any temporary housing remaining in the hands of the Administrator on land under his control after July 1, 1951,[2] could, under section 604 of the new title, be filled except with tenants transferred from other temporary housing in the same locality being closed under the Lanham Act; remaining tenants would be given notice on or before March 31, 1952, to vacate the premises by July 1, 1952; and, thereafter, eviction action would be instituted promptly. The structures would be removed as soon as practicable after they became vacant. These dates would be extended, however, if required by any extensions of time

[2] As pointed out in fn. 1, p. 4, *supra*, this date and those that follow, fixing time limits upon the Administrator's action, were changed by executive orders issued pursuant to section 611 of the Act.

permitted to localities or others for meeting conditions to transfer of the housing under section 601.

In the judgment of your committee definite steps such as these should be taken to close and remove the temporary housing which the communities do not take themselves or which is not sold by the Government after determinations by the communities involved that it is satisfactory for continued use. While an immediate closing of this housing might, because of acute housing shortages, cause great hardship to occupants and communities, this provision would avoid evictions to the greatest extent feasible and at the same time provide for the eventual removal of the temporary structures.

The provisions of this section for closing and removal would be inapplicable in four limited types of situations:

* * * * *

Section 202 of the amendment would amend section 313 of the Lanham Act to provide that the final date for removal of housing of a temporary character shall be December 31, 1952, rather than January 1, 1951, as now provided, or such later date as may be required to be established because of extensions of time for freezing vacancies and bringing eviction actions as provided in the new section 604. This section 313, as amended, would apply to such of the veterans' reuse housing as is not relin-

> quished or transferred to the sponsoring bodies, to housing relinquished or transferred to local agencies subject to removal requirements, and to temporary housing *included in the special exceptions* to the procedure for vacating and removing housing prescribed in section 604. [Emphasis added.]

As the Court of Appeals said (Pet. 15-16): "Appellants' [petitioners'] construction would make all vacation of temporary housing subject to the acute-housing-shortage exception in Section 313 and thus would largely nullify the unqualified mandatory language of Section 604 as to notices to vacate. But both provisions must be given effect if possible, and they both can be given effect by reading Section 313 as applying to the removal of buildings on land not under the control of the Administrator and of buildings on property excepted by the terms of Section 604. This view is confirmed by reference to the legislative history.... The Senate Report [quoted above] made the matter quite clear.... Throughout consideration of the bill Congress evinced a strong purpose to eliminate this temporary housing and to get the Government out of the business of maintaining and renting it."

CONCLUSION

The decision below is correct and there is no conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted,

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